

2019 SENATE JUDICIARY

SB 2070

2019 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

SB 2070
1/8/2019
#30516 (3:32)

☐ Subcommittee
☐ Conference Committee

Committee Clerk: Meghan Pegel

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to amend and reenact subsection 1 of section 30.1-13-03 of the North Dakota Century Code, relating to priority among persons seeking appointment as personal representative.

Minutes:

No Attachments

Chair Larson opened the hearing on SB 2070.

Cynthia Feland, District Court Judge in the South Central Judicial District, testifies in favor of bill

Judge Feland: This is a housekeeping bill. All it's intended to do is add, when we were looking at the potential for priorities of appointment, a guardian or a conservator of the decedent at the time of death. Sometimes we don't have anyone else, and a lot of times people who are guardians are not necessarily family members; they could be other interested individuals. So in this case where you don't have anybody else who can take care of the estate, here's the person who would know because they already have had the financial responsibilities oftentimes and other responsibilities as far as the care and management of the decedent's estate prior to the time of death. So this will basically give them the ability to come in and make them more the priority. If you look at this case, it talks about other heirs the decedent may have had some property that they're giving to an organization or something else where they could be appointed as an heir, but this we felt made it cleaner when there weren't other family members to include as a potential individual who could be appointed. We felt that where their priority is being listed specifically, that they are the fifth person of priority for appointment was appropriate all things considered.

(2:35) Sara Behrens, Staff Attorney for Court Administrator's Office, testified in favored.

Behrens: We are in support of this bill.

Chair Larson closes the hearing on SB 2070.

2019 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

SB 2070
1/8/2019
#30533 (0:37)

☐ Subcommittee
☐ Conference Committee

Committee Clerk: Meghan Pegel

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to amend and reenact subsection 1 of section 30.1-13-03 of the North Dakota Century Code, relating to priority among persons seeking appointment as personal representative.

Minutes:

No Attachments

Vice Chairman Dwyer: Moved a Do Pass
Senator Myrdal: Seconded.

A Roll Call Vote Was Taken: 6 yeas, 0 nays, 0 absent. Motion carries.

Senator Bakke will carry the bill.

**2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2070**

Senate Judiciary Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation: ☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
Other Actions: ☐ Reconsider ☐ _____

Motion Made By Vice Chairman Dwyer Seconded By Senator Myrdal

Senators	Yes	No	Senators	Yes	No
Chair Larson	X		Senator Bakke	X	
Vice Chair Dwyer	X				
Senator Luick	X				
Senator Myrdal	X				
Senator Osland	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Senator Bakke

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2070: Judiciary Committee (Sen. D. Larson, Chairman) recommends **DO PASS**
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2070 was placed on the
Eleventh order on the calendar.

2019 HOUSE JUDICIARY

SB 2070

2019 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee Prairie Room, State Capitol

SB 2070
3/5/2019
33256

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk: DeLores D. Shimek

Explanation or reason for introduction of bill/resolution:

Relating to priority among persons seeking appointment as personal representative.

Minutes:

1

Chairman Koppelman: Opened the hearing on SB 2070.

Sara Behrens, State Attorney, State Court Administrator's Office: (Attachment #1) Read testimony.

Vice Chairman Karls: I have a friend who went through a guardianship with her mother; only she wasn't a party to it. It was her daughter and two nieces. The guardian appointed by the court has not been to see her mother at the nursing home in two years. I would hate to see that person become the personal representative. If that ever guarded against in cases like this?

Sara Behrens: The guardian would not be first in line for being a personal representative. The court always is going to have that ability if it is not an appropriate person to not appoint them as a personal representative. Objections can be made to someone who is being appointed as the personal representative. There are protections in place for instances such as those.

Vice Chairman Karls: What about a case when the guardian is appointed by the court? So might not the court ignore the list and might have to say. It seems like a conflict.

Sara Behrens: I think the safeguards that are in place and the court to hear any concerns; the court will do something that is in the best interest of that person. They would not do something simply because they appointed that guardian.

Rep. Paur: It mentions devisees in a couple places here. The assets of personal property could be greater in personal property than in real property. Do you know why it is restricted to devisees?

Sara Behrens: I am not sure. I don't know who got put in which position; I don't know the reason why the list came out in the order it did. Other heirs are in the list. The devisee was put ahead of them. I don't know the background reasoning why the list came out in the order it did.

Rep. McWilliams: What is a devisee?

Sara Behrens: When you have a will you are going to have the decedent who has specifically left property to specific people. It is what the person has left something to in the will is called. You could leave a specific item to a specific person who wouldn't necessarily be the person who would receive that property.

Rep. McWilliams: Where does the children fall in this list?

Sara Behrens: It depends on if they are specified devisee's in the will; then they would fall under subsection c. If they are not, then they would fall under f.

Rep. McWilliams: If someone passes away and they do not have a will but they have children; they would be below the guardian or conservator?

Sara Behrens: It is possible.

Rep. Paur: Isn't devisee's limited to real property?

Sara Behrens: I don't believe so.

Rep. Jones: Have you ever seen that where the court has appointed them personal representative and they owe them money?

Sara Behrens: I have not. I don't know if that would typically happen?

Chairman K. Koppelman: You talked about the court would have to approve this and an objection could be raised. If this bill were law and you were in item f; other heirs of the decedent; there is no surviving spouse; but there are surviving children; the guardian would have priority as a personal representative over those others. Based on what you said the child was not named a personal representative because of this priority order; could object to the guardian being named by the court, but because of the priority list is what it is; the court would probably have good cause to say the statute says a guardian should take precedent over a child of the decedent and overrule that objection. Why is the order this way?

Sara Behrens: That situation could happen. That would be a reason not appoint that person; then the court would not. We wouldn't be opposed to witching e and f around.

Chairman K. Koppelman: Has the uniform probate code been amended with this change?

Sarah Behrens: I don't think so.

Rep. Rick Becker: I was sold on the bill until you said you could switch things around. I would think the order is important. If heirs are important it is fine to just have the guardian after the heirs; is that the way, it should be or maybe we shouldn't have it written like this. I am at a loss here now.

Chairman K. Koppelman: The list doesn't contain guardian at all now. A guardian could be another personal representative. I think the order is curious?

Rep. Roers Jones: It is possible for an heir to be a guardian or conservator so if we are specifying a guardian or conservator that could be an heir. Someone who has been appointed to be a person of responsibility. Sometimes guardians or conservators are appointed to act instead of heirs to protect the person who maybe is incapacitated in some way. Was it listed in this order so that person who has a position of responsibility might be listed above the heirs?

Sara Behrens: We debated whether to put guardian, conservator ahead of heirs or not. It is entirely possible that a guardian could be appointed to protect them from nieces, nephews or whatever it maybe. Even if the order was switched around the court would be able to take that into consideration in determining who to appoint. If there is a reason not to, they don't have to appoint it in this specific order.

Rep. Vetter: Would it also be true if you have to be not named in the will; you would be left nothing; otherwise you would be one of those devisees of the decedent so what we are talking about with these other heirs of the decedent is basically somebody that is purposely left out of the will and left nothing; otherwise they are the other heirs. There is a clear reason why the guardian and conservator should be above those other heirs because the person didn't want them to be part of the situation.

Sara Behrens: Yes that is also possible.

Chairman K. Koppelman: I think for cases where someone dies in testate as well as in cases where there is a will?

Sara Behrens: If it goes through a court proceeding I believe a personal representative is appointed.

Chairman K. Koppelman: An heir, if there is a will, is someone named in the will.

Sara Behrens: Not necessarily. If everything is not taken care of in the will it still will be passed to somebody who could be a different person than who is specifically provided for in the will.

Rep. Roers Jones: An heir is anyone who is naturally decedent of you; where a devisee is someone who is named in a will. So you can be a devisee and an heir, but they can still be an heir if you don't name them in your will.

Sara Behrens: If you die without a will there is a way everything falls down to your heirs.

Opposition:

Theresa Decker, District 15: The court does not always make the best decision for a person when they appoint a guardian because sometimes children are left out of that decision for no reason. I would urge you to carefully consider that word guardian in here.

Neutral: None

Recessed.

Chairman K. Koppelman: Sara Behrens' if you could get us more information on that and some of the specific questions would be relative to how does this operate when a will is in place? If this strictly designed for intestate decedents and how does that operate?

2019 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee Prairie Room, State Capitol

SB 2070
3/6/2019
33331

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk: DeLores D. Shimek

Explanation or reason for introduction of bill/resolution:

Relating to priority among persons seeking appointment as personal representative.

Minutes:

1

Chairman Koppelman: Opened the hearing on SB 2070.

Sara Behrens, Staff Attorney, State Court Administrator's Office: (Attachment #1) Went through the testimony and book. There are two types of probates; formal and informal. (:22-12:00) As far as which order, I trust this committee will make a reasonable decision is the better way.

Rep. Vetter: On this creditor part, I don't see how you ever get past the trust company because there are trust companies are all throughout the US. A trust company is always a fiduciary of the client; isn't that correct.

Sara Behrens: Yes, they would be a fiduciary and it would make sense in some instances to do a trust company. If you have an estate that doesn't have a lot of money, that is going to be paid out by the estate. It wouldn't be feasible to do that. I believe it has been static for a long time. In informal you don't actually file the paperwork.

Rep. Magrum: The children are not above the guardian. A devisee is someone who inherits land; is that correct?

Sara Behrens: A devisee is anyone who has been given something in the will. It doesn't have to be real property. If you don't have a will they will just fall under heirs. That might be a reason to swap them around if you have that situation and maybe you want them above. You have to balance them with the situation where there is a will and they have been left out and nobody wants to take on the responsibility of a RP.

Rep. Magrum: Wouldn't they precedence over a guardian? I heard so many bad things about them. What about step children?

Rep. Rick Becker: We are basing our decision on the information you presented. There are some significant circumstances in which it would be great in which the guardian was

ahead of heirs and then there are some where it would be great if the heirs were ahead of the guardian. Why are we putting it in order if they are not disqualified they will be appointed in the following order? Is there a way to put discretion in this bill so we don't have to guess whichever way we go how many injured parties will be fewer versus the other?

Sara Behrens: The way it will work someone will have to apply to be the personal representative. If that person who applies can get a waiver from all the people above them; or if they apply and the court goes to appoint someone else and you object to that, then they are going to have to decide is that person a suitable person. If that person is not a suitable person, the court can declare they are an unsuitable person and then they are under the law unqualified to be a personal representative. If someone does not agree; then it will get into court and you are going to have those court hearings.

Rep. Roers Jones: If a person dies with a will they have the right to choose whomever they wish. This is only used when someone dies without a will; then it goes across to the other people in the list.

Chairman K. Koppelman: This would be the cases where if you have a will you name a personal representative.

Rep. Jones: How often is there a will or not?

Sara Behrens: My parents don't have a will. It is common to not have a will.

Chairman K. Koppelman: Sometimes it might be better to have someone that is a disinterested party. It is still up to the court to decide. It might be better to have someone who is disinterested rather than the heirs.

Sara Behrens: Yes you are right. In some instances, they are going to be the best person.

Chairman K. Koppelman: We have all heard horror stories about guardians and I think most do a good job. It is still up to the court to decide. The list does come into play when the courts go down the line.

Rep. Jones: How binding is our list to the courts? How much leeway to they have?

Sara Behrens: I have never practiced probate law so I have also have not seen it in action. I think priority is there so that you don't have people skipping ahead when they shouldn't be and this way you have who should be starting with who is in the will and you have to get those waivers if you want to skip the line. Once you get into contested issues and complicated matters you are going to get into court and they can fine these people unsuitable if there is a reason to.

Rep. Roers Jones: I am looking at remainder of the statute here. The list we are looking at applies to formal and informal probate. Informal probate would be where there would be no dispute. Subsection 2 sets out the process dealing with objections to an appointment that can be used in formal probate proceedings. In an informal probate procedure where there

aren't any fighting parties they would go through this order from top to bottom and pick the first person who qualifies. The court would weigh the factors involved in that objection.

Chairman K. Koppelman: So there are two scenarios; one is the court is going down the list and not only qualifications; but also willingness. Or the challenge where someone tries to jump in line. Any further testimony on SB 2070?

Hearing closed.

Rep. Bob Paulson: Discussed personal experience with a will and the mom passed away and the dad is incapacitated and none of the kids are in the will. Now you have a guardian or conservator above a direct blood descendant. I think we should consider that.

Rep. Roers Jones: This list of people acting as a personal representative does not mean that they get to distribute to themselves. So when we are talking about a conservator who might be considered before an heir who is not listed in the will; doesn't mean the assets aren't eventually going to end up at the heir. I understand the concerns about a guardian or conservator being listed above heirs because it seems those should be the most natural in most cases. I would suggest we leave the language in the order it is because if there is a guardian or a conservator in most cases I would say there is a reason for that.

Chairman K. Koppelman: As Rep. Paulson said there might be cases where guardian is appointed for reasons completely other than the kinds of decisions that are made in an estate distribution or probate.

Rep. Roers Jones: Is this is a guardian who maybe would make medical decisions or something along those lines they have to accept the appointment as a personal representative so if they are not comfortable in that role they are not compelled to accept that responsibility.

Chairman K. Koppelman: I can see some problems with having heart burn coming back from this court appoint stuff?

Rep. Vetter: I agree with Rep. Roers Jones. The reason for keeping it in the same line because the guardian and conservator have a legal fiduciary responsibility toward that estate. The scenario where you have the three people; he or she as the conservator of that will legally is supposed to dive that they have to follow. These other heirs might be legitimate, but it could be an heir who does not have the best interest of the estate and they have the legal responsibility so if they are cheating, now those other heirs can go back and protest.

Chairman K. Koppelman: A guardian is a different capacity than a personal representative of the estate. We are discussing where to they go in the order. The responsibility of any personal representative; whether it is an heir, trust or a guardian. I do trust the court to make the ultimate decision.

Rep. Vetter: Generally you are not going to have a guardian or conservatory that would be anti, but you could have heirs that are anti?

Rep. McWilliams: Are they paid at all?

Sara Behrens: Yes if they are a disinterested party too they are paid.

Rep. McWilliams: Under this they can trigger attorney fees that would go down to the heirs; where a cousin or child would be perfectly fine doing it. Now it is subject to paying all these fees because the guardian or conservator; who is being paid, starts triggering all kinds of attorney fees because of it.

Chairman K. Koppelman: Personal representatives can be paid also. That is more likely to be the case with a guardian or some disinterested party who is coming into the issue for that purpose versus your child or brother.

Rep. Roers Jones: Regarding the payment or attorney fees I think those are equally likely to occur because an heir would need help understanding how to be a personal representative would have to hire an attorney in a complicated probate situation. I wanted to be sure we are not getting stuck on heir and thinking only of the children and close relatives. If you think of where someone dies without a will and maybe they have a substantial estate; you can have heirs come out who have never known the decedent for example in the estate of Prince there are heirs coming out of the woodwork. It is important to make sure we have a conservator or guardian listed above the heirs because obviously they are not disinterested or neutral parties looking out for the best interest of the decedent's wishes.

Chairman K. Koppelman: The court would have the wisdom to say these are gold diggers and we are not going to appoint them and would appoint the guardian whether it is in this order or the other?

Rep. Roers Jones: It all depends on the objection process and how they have to go through that. I think having the priorities set out there allows them more flexibility in using that discretion. We are talking about heirs who are not named by the decedent or if there is no will.

Chairman K. Koppelman: I think a guardian would be much more aware of the process.

Rep. Bob Paulson: Typically a guardian is appointed that have absolutely nothing to do with the will or estate.

Rep. McWilliams: If somebody choses to use an attorney that is a choice and I would love to see an amendment to put e or f on the list as an or; not as a priority.

Motion Made to amend the bill to switch e and f by Rep. Bob Paulson; Seconded by Rep. Magrum

Discussion:

Voice vote carried.

Do Pass Motion as Amended Made by Rep. Magrum; Seconded by Rep. McWilliams

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Discussion: None

Roll Call Vote: 10 Yes 2 No 2 Absent Carrier: Rep. Bob Paulson

Closed.

March 6, 2019

DP 3/6/19

PROPOSED AMENDMENTS TO SENATE BILL NO. 2070

Page 1, line 14, remove "The guardian or conservator of the decedent at the time of the decedent's death."

Page 1, line 15, remove "f."

Page 1, after line 15, insert:

"f. The guardian or conservator of the decedent at the time of the decedent's death."

Renumber accordingly

**2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
SB 2070**

House Judiciary Committee

☐ Subcommittee

Amendment LC# or Description: Switch e & f

Recommendation: ☒ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ _____

Motion Made By Rep. Paulson Seconded By Rep. Magrum

Representatives	Yes	No	Representatives	Yes	No
Chairman Koppelman			Rep. Buffalo		
Vice Chairman Karls			Rep. Karla Rose Hanson		
Rep. Becker					
Rep. Terry Jones					
Rep. Magrum					
Rep. McWilliams					
Rep. B. Paulson					
Rep. Paur					
Rep. Roers Jones					
Rep. Satrom					
Rep. Simons					
Rep. Vetter					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:
Voice vote carried.

**2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
SB 2070**

House Judiciary Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation: ☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☒ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ _____

Motion Made By Rep. Magrum Seconded By Rep. McWilliams

Representatives	Yes	No	Representatives	Yes	No
Chairman Koppelman	X		Rep. Buffalo	X	
Vice Chairman Karls		X	Rep. Karla Rose Hanson	X	
Rep. Becker	----			10	
Rep. Terry Jones	X				
Rep. Magrum	X				
Rep. McWilliams	X				
Rep. B. Paulson	X				
Rep. Paur	----				
Rep. Roers Jones	X				
Rep. Satrom	X				
Rep. Simons	X				
Rep. Vetter		X			

Total (Yes) 10 No 2

Absent 2

Floor Assignment Rep. Paulson

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2070: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (10 YEAS, 2 NAYS, 2 ABSENT AND NOT VOTING). SB 2070 was placed on the Sixth order on the calendar.

Page 1, line 14, remove "The guardian or conservator of the decedent at the time of the decedent's death."

Page 1, line 15, remove "f."

Page 1, after line 15, insert:

"f. The guardian or conservator of the decedent at the time of the decedent's death."

Renumber accordingly

2019 TESTIMONY

SB 2070

#1
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P.1

Senate Bill 2070
House Judiciary Committee

Testimony Presented by Sara Behrens
Staff Attorney, State Court Administrator's Office
March 5, 2019

Good afternoon Chair Koppelman and members of the committee. My name is Sara Behrens and I am a staff attorney with the State Court Administrator's Office. Senate Bill 2070 was introduced at the request of the Supreme Court. Senate Bill 2070 amends section 30.1-13-03 to allow a guardian or conservator to be in the list of those who have priority to serve as personal representative of a decedent's estate. Guardians and conservators already have knowledge of the decedent's assets and, at times, would be the best person to fill the role. In some cases, the ward may have no family or other person to administer the estate. It is appropriate to have these individuals be in the priority list and to provide them priority over some others in the list who may not have the amount of information already possessed by the guardian or conservator such as a trust company or any creditor.

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Senate Bill 2070
House Judiciary Committee

Testimony Presented by Sara Behrens
Staff Attorney, State Court Administrator's Office
March 6, 2019

Good afternoon Chair Koppelman and members of the committee. For the record, my name is Sara Behrens and I am a staff attorney with the State Court Administrator's Office. I was asked to come back today and provide some additional general information related to probate in North Dakota.

For some background on how probate typically works, I consulted our self-help center. I have also included the informal probate guide found on our website under self-help. As a disclaimer, I have never been a probate attorney and probate can get fairly complicated, so I will try to keep this pretty basic. There are two types of probate: formal and informal. A question was raised yesterday regarding whether the statute sought to be amended in SB 2070 would apply to all probates. The answer is yes, with a narrow exception. The law provides for an "Affidavit for Collection of Personal Property of the Decedent" which is a type of informal probate. This is only for estates where the total value of the estate is less than \$50,000 and there is no real property. This option does not require anything to be filed with the court and no personal representative is appointed.

The other type of informal probate is for estates over \$50,000 or that have real property. In this type of informal probate, a personal representative does need to be appointed but no court appearance or court hearing is necessary if the proper forms are filed with the court and the correct procedures followed. If there is a will, the will is probated. The UPC provides for how property is distributed if the decedent died intestate, meaning, with no will. If there is property not devised in the will, that property would be distributed pursuant to the intestacy laws as well. Informal probates are for those where everyone can agree and there is no conflict. Likely, if there is any conflict, the matter will be put on for hearing and become a formal probate. The self-help center provides forms for use in informal probates.

If more than 3 years have passed since the death of the decedent or the will is contested, formal probate must be used. This will require more complex filings as well as court appearances. Because these situations become more complex, the self-help center does not provides forms for a formal probate.

To provide information in response to some of the questions posed yesterday.

North Dakota adopted the Uniform Probate Code in 1973. It is one of 16 states that have adopted the UPC. The Legislature adopted some amendments in 1999, however; section 30.1-13-03 has not been amended since 1981 when a trust company was added. Interestingly, a trust company is not included in the Uniform Act.

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Going through the list of those with priority, the person with first priority is the one nominated in the will. The person nominated in the will may not always accept the appointment or there may not be a will. The second priority is a surviving spouse but only if that spouse is a devisee (someone left personal or real property) in the will. The third priority includes all other individuals who are left property in the will. The fourth priority is a surviving spouse who is not left any property. The fifth priority includes other heirs of the decedent. Heirs are those who would take pursuant to the intestate succession. The sixth priority is a trust company. This was added in 1981. I reviewed the legislative history and it appears that a trust company was added as another option when there is nobody else to take the role because they are professional companies trained to do this type of work. Finally, a creditor is included as a last resort if there is nobody above the creditor in the priority list who has been appointed. This enables the creditor to take the initiative to have the estate probated so that creditors can be paid. A creditor is an interested party because they have a financial stake in the estate. If the court finds someone in the priority list to be unsuitable, that person would not be a qualified person to be appointed a personal representative. For instance, someone incapacitated or residing in another state may not be a suitable person.

Typically, if there is a will, one of those individuals listed in a-c will be appointed the personal representative. If there is no will, it will likely be the surviving spouse,

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if there is one. However, an application is made by the individual wishing to be appointed personal representative. That is what would get the probate started and someone further down, or not on the list at all could apply to be personal representative. They would need to have a waiver from each individual higher in the priority list.

As was discussed at the hearing yesterday, there are reasons both for and against having the guardian or conservator above other heirs in the priority list. As was stated, the other heirs who are not devisees may have been intentionally excluded for some reason which would be a good reason to include them ahead of other heirs. In cases of an intestate decedent though, this would not necessarily be true. However, as was also pointed out, sometimes the guardian who was appointed did not have the best interests of the decedent in mind and will not have the best interests of the estate in mind. This would be a reason to put a guardian or conservator below other heirs in priority. In some cases, perhaps even most, the guardian or conservator may also be an heir or devisee. I trust that this committee will make a reasoned decision on where best to place guardian or conservator.

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ND STATE COURTS

Informal Administration of an Estate

Informal Probate

OFFICE OF STATE COURT ADMINISTRATOR

Informal Administration of an Estate

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Time Schedule Informal Probate Proceedings

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Appendix C

Glossary of Terms

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Introduction

North Dakota has adopted the Uniform Probate Code, which allows a person to informally probate a Will and have a personal representative appointed without the necessity of a court appearance or a court hearing, as long as the proper forms are filed and the correct procedures followed.

The purpose of this packet is to help North Dakota citizens understand the procedures that must be followed and forms that must be filed with regard to the informal probate of a Will and/or the appointment of a personal representative of an estate of a deceased citizen. Since each estate has different needs, it is important to know the proper methods of managing a particular estate. The information in this packet should assist in selecting and filing the correct forms with the court in order to informally administer an estate and to have, if needed, a personal representative appointed. The necessary probate forms may be purchased from the district court or obtained online at ndcourts.gov Checklist of Forms. The North Dakota tax forms are available from the State Tax Commissioner, State Capitol, Bismarck. The federal income and estate tax forms are available from your local IRS office and on the internet.

This packet has limitations. It cannot address every legal question that could arise in a particular estate, nor does it cover all the responsibilities and liabilities of the personal representative and/or the heirs, such as the filing of income tax returns. Matters not properly handled could create problems and expense for the estate and the heirs if they must be dealt with after the estate is initially closed.

Therefore, since each estate, no matter how small, can raise many serious legal questions, you are advised that you are proceeding at your own risk. The law forbids the district court judge or court personnel to give legal advice on how to administer an estate. In legal matters, you should exercise caution and good judgment in proceeding without the advice of an attorney.

References to N.D.C.C. or in [] mean the North Dakota Century Code. The Century Code is available at most public and university libraries and at the district court's office in each county.

Handling the Small Estate in North Dakota in Informal Proceedings

First Step - Listing of Property

Most of the work required to be done in an estate is the legal and orderly transfer of the decedent's property to the persons entitled to receive it. The first step to be taken in any estate is to prepare a list (See Fig. A) of all the property owned by the decedent (the person who has died). The value of each item is the fair market value as of the date of the decedent's death.

Figure A:

INVENTORY	A PROBATE PROPERTY	B PROBATE PROPERTY	C NON- PROBATE PROPERTY
DESCRIPTION OF PROPERTY	Owned solely by Decedent	Owned by decedent and others (as tenants in common)	Owned solely by decedent or by decedent and others (as joint tenants)
REAL PROPERTY (such as house, lake cabin, farmland, oil or mineral rights, life estate.)	\$	\$	\$
PERSONAL PROPERTY A. Money, notes & cash (such as c.d.'s & bank accounts)	\$	\$	\$
B. Stocks and bonds	\$	\$	\$
C. Insurance	\$	\$	\$
D. Miscellaneous (such as vehicles, personal belongings, tools, farm equipment)	\$	\$	\$
SUBTOTALS	\$	\$	\$
Total value of property in Column A			\$
Total value of property in Column B			\$
Total value of property in Column C			\$
TOTAL VALUE OF ESTATE ASSETS			\$
* Non-probate means such property as life estates, trusts, insurance proceeds payable to a designated beneficiary and gifts in contemplation of death, as well as property held in joint tenancy.			

The list should identify the amount of any encumbrance (debt or lien) that exists on any item of property. [N.D.C.C. 30.1-18-06.] All reasonable steps must be taken for the management and protection of the property. [N.D.C.C. 30.1-18-09.]

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Safe Deposit Box

- A. If a decedent rented a safe deposit box jointly with another person or persons, no court order or affidavit is needed for the other person to access the box.
- B. If safe deposit box was rented in decedent's name alone, prepare Affidavit for Access to Safe Deposit Box and present signed Affidavit to bank.
- C. On first visit to bank, remove decedent's will. Will is to be filed with the court if the estate needs to be probated.

Estate Tax

Consult an accountant for the most current information on estate tax.

Income Tax

Estate income tax returns may be required if the estate had gross income of \$600 or more for the tax year. Forms and instructions are available from the Internal Revenue Service and State Tax Commissioner.

Non-Probate Property

- A. Real property owned by decedent and others as joint tenants is transferred by filing a certified death certificate and property description with the county recorder.
- B. Other non-probate property interests are transferred or terminated by presenting a death certificate to the holder.

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Opening and Probating the Estate

A. Probate Estate \$50,000 or less.

If the total value of the probate property (Fig. A, Columns A and B) less the encumbrances on those items of property is \$50,000 or under and no real property is involved [N.D.C.C. 30.1-23-01]:

1. After 30 days have elapsed since decedent's death, prepare Affidavit for Collection of Personal Property (Form 1).
2. Present Affidavit to holder of the personal property for transfer to successor (person entitled to receive it).

B. Probate Estate Greater Than \$50,000 or Real Property.

If total value of probate property (Fig. A, Columns A and B) less the encumbrances on those items of property is over \$50,000, appoint personal representative to administer the estate and distribute decedent's property to the person or persons entitled to receive it, as follows:

1. If decedent left a Will.

Anytime after five days of decedent's death, file with district court:

- a. Application for Informal Probate of Will and Appointment of a Personal Representative (Form 2).
- b. Letters Testamentary (Form 4).
- c. Statement of Informal Probate of Will and Appointment of a Personal Representative (Form 3).
- d. Original Will of decedent.
- e. Filing fee of \$80.

2. If decedent did not leave a Will, after five days of decedent's death, file with district court:

- a. Application for Informal Appointment of Personal Representative in Intestacy (Form 17).
- b. Letters of Administration (Form 19).
- c. Statement of Informal Appointment of Personal Representative (Form 18).
- d. Filing fee of \$80.

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C. Priority for appointment as personal representative [N.D.C.C. 30.1-13-03].

1. Person or persons nominated in decedent's Will.
2. Alternate person or persons nominated in decedent's Will.
3. The surviving spouse of the decedent who is entitled to receive property of the decedent under the decedent's Will.
4. Other persons entitled to receive property of decedent through the decedent's Will.
5. The surviving spouse of the decedent.
6. Other heirs of the decedent.
7. A trust company.
8. Forty-five days after decedent's death, any creditor.

If the person seeking appointment does not have highest priority, secure a signed Waiver of Appointment (Form 9) from all persons who have a higher or equal right to the appointment. File waivers with the district court along with other appointment documents.

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Duties of Personal Representative

No bond is required of a personal representative who is administering an estate under the guidelines of this brochure. However, the personal representative is acting as a trustee of the estate property. If the exercise of power concerning the estate is improper, the personal representative is liable to interested persons for loss or damage resulting from the improper conduct.

The duties of a personal representative appear in Chapter 30.1-18 of the North Dakota Century Code. A personal representative must keep accurate records of all receipts and disbursements (Form 14). The personal representative should keep estate property separate from his or her own property until the assets are distributed. Although the assistance of an attorney is not required for informal proceedings, the personal representative should consult with an attorney if uncertain how to proceed.

A. Times within which certain steps must be taken.

1. Within 30 days after appointment, prepare Notice and Information to Heirs and Devisees (Form 5). Send copy to each heir and devisee [N.D.C.C. 30.1-18-05, see also 30.1-14-06].
2. Within six months after appointment or nine months after the death of the decedent, whichever is later, prepare inventory (Form 10). File the original inventory with district court [N.D.C.C. 30.1-18-06]. If the inventory *is not* filed with the court, mail a copy of the inventory to each of the heirs in an intestate estate or to each of the devisees if a will has been probated, and to any other interested persons who request a copy.
3. After appointment, send Affidavit Forwarding Application to Human Services (Form 7), copy of application for appointment (Form 2 or 17), and a list of surviving joint tenants to the Department of Human Services, State Capitol, Bismarck, ND 58505 [N.D.C.C. 50-06.3-07].
4. Within three months after mailing Notice to Creditors (Form 6) to creditors who are known to the Personal Representative and after first publication of Notice to Creditors, or within three years after decedent's death if notice to creditors has not been published and mailed, creditors must file any claims against the estate [N.D.C.C. 30.1-19-01; N.D.C.C. 30.1-19-03].
5. Within 60 days after the time for original presentation of a claim has expired, if the claim is to be disallowed, it must be disallowed in writing or will be deemed to be approved and must then be paid [N.D.C.C. 30.1-19-06].
6. Within nine months after decedent's death, if filing requirement exists⁽¹⁾ U.S. Estate Tax Return and supporting documents must be filed and tax paid.
7. Within 15 months after decedent's death, if U.S. Estate Tax Return was filed, the N.D. Estate Tax Return and supporting documents must be filed and tax paid [N.D.C.C. 57-37.1-07].
8. Within three years after decedent's death, creditors may file claims in estates in which Notice to Creditors was not published [N.D.C.C. 30.1-19-03].

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B. Times after which certain steps may be taken.

1. Any time after appointment of personal representative, Notice to Creditors (Form 6) may be published, but this is not required [N.D.C.C. 30.1-19-01].

2. If Notice to Creditors is published, three months after first publication, personal representative shall proceed to pay claims allowed in the following order of priority [N.D.C.C. 30.1-19-05]:

a. Costs and expenses of administration.

b. Reasonable funeral expenses.

c. Debts and taxes with preference under federal law.

d. Reasonable and necessary medical and hospital expenses of the last illness of the decedent, including compensation of persons attending the decedent.

e. Unpaid child support obligations.

f. Debts and taxes with preferences under other laws of this state.

g. All other claims.

3. After assets have been gathered and all claims paid, the personal representative may distribute remaining assets to the heirs. Personal property is distributed by Personal Representative's Assignment (Form 13). Real property is distributed to heirs or devisees by Personal Representative's Deed of Distribution (Form 11). Real property that is sold by a Personal Representative is transferred by a Personal Representative's Deed (Form 12). Deeds must be recorded along with a certified copy of personal representative's Letters Testamentary (Form 4) or Letters of Administration (Form 19), certified on or after the date of the deed.

C. Times after which certain steps cannot be taken.

1. Three months after first publication of Notice to Creditors, time for filing claims expires. No claims may be filed by creditors after this date [N.D.C.C. 30.1-19-03].

2. Three years after decedent's death - generally no informal proceedings for appointment of personal representative may be commenced [N.D.C.C. 30.1-14-01].

3. Three years after decedent's death - time for filing claims expires in estates in which Notice to Creditors was not published. No claims may be filed by creditors after this date [N.D.C.C. 30.1-19-03].

Distribution of the Estate

Distribution is made as follows:

A. If a Will.

If decedent left a Will, according to the decedent's Will, except:

1. A devisee may renounce in writing devisee's interest under the Will [N.D.C.C. 30.1-10.1].
2. A surviving spouse may elect in writing, within the later of nine months after decedent's death or six months after probate of the Will, to take one-half of the augmented estate regardless of what is specified in the Will. Notice to interested persons and a court hearing are required on the written petition filed with the court and personal representative [N.D.C.C. 30.1-05-01 and 30.1-05-05].

B. If no Will.

If the decedent left no Will, according to N.D. laws of intestate succession, as follows [N.D.C.C. 30.1-04]:

1. If decedent left a surviving spouse, the share of the intestate estate which a surviving spouse receives is [N.D.C.C. 30.1-04-02]:

a. If there are no surviving descendants (such as children or grandchildren) or parent of the deceased or if all of the surviving descendants of the deceased are also descendants of the surviving spouse and there is no other descendant of the surviving spouse who survives the decedent (for example, children from a prior marriage of the surviving spouse), the surviving spouse receives the entire intestate estate.

b. If there are no surviving descendants, but the decedent is survived by a parent or parents, the surviving spouse receives the first \$200,000 of the estate assets, plus three-fourths of the balance of the intestate estate.

c. If there are surviving descendants of the decedent, all of whom are also descendants of the surviving spouse, and surviving spouse also had descendants who are not descendants of the decedent (i.e., surviving spouse has descendants from a prior marriage), the surviving spouse receives the first \$150,000 of the estate assets, plus one-half of the balance of the intestate estate.

d. If there are surviving descendants, one or more of whom are not descendants of the surviving spouse, the surviving spouse receives the first \$100,000 of the estate assets plus one-half of the balance of the intestate estate.

2. If part of the intestate estate does not pass to the surviving spouse as listed above, or if there is no surviving spouse, the intestate estate passes as follows:

- a. To the descendants of the decedent, who will take by representation.
- b. If there are no surviving descendants, to the decedent's parent or parents equally if both survive, or to the surviving parent.
- c. If there are no surviving descendants or parent, to the descendants of the decedent's parents or either of them by representation (i.e., decedent's brothers and sisters, then nieces and nephews).
- d. If there are no surviving descendants, parent, or descendants of a parent, but the decedent is survived by one or more grandparents or descendants of grandparents, half of the estate passes to the decedent's paternal grandparents equally if both survive, or to the surviving paternal grandparent, or to the descendants of the decedent's paternal grandparents or either of them if both are deceased, by representation; and the other half passes to the decedent's maternal relatives in the same manner; but if there is no surviving grandparent or descendants of a grandparent on either the paternal or maternal side, the entire estate passes to the decedent's relatives on the other side in the same manner as the half (i.e., grandparents and then uncles and aunts, and then cousins).

3. An heir may renounce an interest and the surviving spouse make the election as in the estate where there is a Will.

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Closing the Estate

- A. After the claims have been paid and assets of the estate distributed, the estate is closed as follows:
1. For small estates⁽²⁾ in which Notice to Creditors has not been published, file Sworn Statement of Personal Representative Closing a Small Estate (Form 16). It may be filed with district court anytime after assets have been distributed [N.D.C.C. 30.1-23-03 and 30.1-23-04].
 2. For any size estates in which Notice to Creditors has been published, file Personal Representative's Verified Statement to Close Estate (Form 15). It may be filed with district court anytime after assets have been distributed, but not before three months after the first publication of Notice to Creditors [N.D.C.C. 30.1-21-03].
- B. If no proceedings involving the Personal Representative are pending in the court one year after either closing statement is filed, the appointment of the personal representative terminates.

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Appendix A: Time Schedule for Informal Probate Proceedings

Times after which certain steps *may* be taken:

Five days after decedent's death - informal proceedings may be commenced.

Thirty days after decedent's death - Affidavit for Collection of Personal Property may be prepared and presented.

Anytime after appointment of personal representative - personal representative may publish Notice to Creditors.

Three months after first publication of Notice to Creditors - personal representative shall proceed to pay claims allowed in order of priority.

Three months after first publication of Notice to Creditors - Closing Statement may be prepared and filed by the personal representative at this time if assets are distributed.

Anytime after assets of the estate have been distributed - Closing Statement may be prepared and filed by the personal representative in estates in which Notice to Creditors has not been published.

Times within which certain steps *must* be taken:

Within thirty days after appointment of personal representative - Notice of Appointment of personal representative must be sent to heirs and devisees.

After appointment of Personal Representative - send copy of Application for Appointment of Personal Representative and list of names of devisees, surviving joint tenants, and heirs to the Department of Human Services.

Within sixty days after the time for original presentation of claim has expired, if claim is to be disallowed, claim must be disallowed in writing or it will be deemed to be approved and must then be paid.

Within three months after first publication of Notice to Creditors - creditors must file any claims against the estate within this time period.

Within six months after appointment of Personal Representative or nine months after the death of the decedent, whichever is later - inventory must be prepared and copies distributed to heirs/devisees or original filed with district court.

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Within nine months after decedent's death - if required, United States Estate Tax Return must be prepared and filed and tax paid.

Within fifteen months after decedent's death - if required, North Dakota Estate Tax Return must be prepared and filed and tax paid.

Within three years after decedent's death - creditors may file claims in estates in which Notice to Creditors has not been published.

Times after which certain steps *cannot* be taken:

Three months after first publication of Notice to Creditors - time for filing claims expires. No claims may be filed by creditors after this date.

Nine months after decedent's death or six months after probate of decedent's will, whichever occurs last - surviving spouse may no longer petition to take his or her elective share in the augmented estate after these time limits.

Three years after decedent's death - generally no informal proceedings for appointment of personal representative may be commenced.

Three years after decedent's death - time for filing claims expires in estates in which Notice to Creditors was not published. No claims may be filed by creditors after this date.

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Appendix B Checklist of Forms

You may use this sheet to list or check off the most common forms you may need to file in order to administer an estate. These forms can be purchased from any district court or obtained online below. Tax forms may be obtained free from the State Tax Commissioner and Internal Revenue Service.

____ **Figure A** - Inventory of Decedent's Property

Forms for estate less than \$50,000, no real property

____ **Form 1** - Affidavit for Collection of Personal Property

Forms for estate greater than \$50,000, with a will

____ **Form 2** - Application Informal Probate/Appointment of Personal Representative

____ **Form 3** - Statement of Informal Probate and Appointment of Personal Representative

____ **Form 4** - Letters Testamentary

____ **Form 5** - Notice and Information to Heirs & Devisees

____ **Form 6** - Notice to Creditors

____ **Form 7** - Affidavit Forwarding Application to Human Services

____ **Form 8** - Affidavit for Access to Safe Deposit Box

____ **Form 9** - Waiver of Right of Appointment

____ **Form 10** - Inventory and Appraisement

____ **Form 11** - Personal Representative Deed of Distribution

____ **Form 13** - Personal Representative Assignment

____ **Form 14** - Record of Receipts & Disbursements

____ **Form 15** - Personal Representative Verified Statement to Close Estate

____ **Form 16** - Sworn Statement of Personal Representative to Close a Small Estate

Forms for estate greater than \$50,000, no will

- ___ **Form 17** - Application for Informal Appointment of Personal Representative in Intestacy
- ___ **Form 18** - Statement of Informal Appointment of Personal Representative
- ___ **Form 19** - Letters of Administration
- ___ **Form 5** - Notice and Information to Heirs and Devisees
- ___ **Form 6** - Notice to Creditors
- ___ **Form 7** - Affidavit Forwarding Petition to Human Services
- ___ **Form 8** - Affidavit for Access to Safe Deposit Box
- ___ **Form 9** - Waiver of Right of Appointment
- ___ **Form 10** - Inventory and Appraisement
- ___ **Form 11** - Personal Representative Deed of Distribution
- ___ **Form 12** - Personal Representative's Deed (Sale of Real Property)
- ___ **Form 13** - Personal Representative's Assignment
- ___ **Form 14** - Record of Receipts & Disbursements
- ___ **Form 15** - Personal Representative Verified Statement to Close Estate
- ___ **Form 16** - Sworn Statement of Personal Representative to Close a Small Estate

Appendix C

Glossary of Terms

Augmented Estate - The value of the estate reduced by funeral and administration expenses, homestead, and family allowances and exemptions, and enforceable claims to which is added the value of certain specified property transfers and property owned by the decedent's surviving spouse at the decedent's death - see North Dakota Century Code §30.1-05-02(2). The surviving spouse may elect to take one-half of it in lieu of a share in the will or an intestate share.

Bond - A written agreement with an insurance company or other surety that, in the event that the personal representative causes a certain loss to the estate, the insurance company or surety will make up that loss.

Decedent - A deceased person; the person who died.

Devisee - A person who takes the decedent's property through a provision in the Will.

Encumbrance - A claim or liability on property whose value is lessened because of that claim or liability; includes easements, mortgages, liens, etc.

Estate - All the property that the decedent owned or had an interest in on the date of death.

Heir - A person entitled to take the decedent's property according to the laws of intestate succession.

Informal Proceedings - Appointment of personal representative and administration of an estate with limited supervision by the court or notice to interested persons. However, an interested person can apply to the district court for formal proceedings or supervision by the court, in which case the court will determine how to proceed.

Interested Persons - Includes heirs, devisees, children, spouse, creditors, beneficiaries, and any others having a property right in or claim against the estate of a decedent which may be affected by the particular proceeding.

Intestate - A decedent who left no Will.

Intestate Succession - The laws that stipulate who is to take the decedent's property if the decedent dies without a Will or if the decedent's Will does not dispose of all the property.

Issue - A person's lineal descendants of all generations; includes a person's children, grandchildren, great grandchildren, etc.

Joint Tenants - Persons who own property with the equal right to share the property during their lives; on one person's death, the property passes to and is then owned by the survivor or survivors.

Lien - A claim against property to secure a debt.

Non-probate Property - That portion of the decedent's estate that passes automatically, such as to the surviving joint tenant(s) or to a designated beneficiary.

Personal Property - All property other than real property; includes money, stock, automobiles, household furnishings, etc.

Personal Representative - Person or persons appointed by the court to settle and distribute the estate of a decedent.

Probate Property - That portion of the decedent's estate which passes by decedent's Will or by the laws of intestate succession.

Property - Includes both real and personal property or any interest therein, and means anything that may be the subject of ownership.

Real Property - Land and things attached to the land such as buildings.

Security Interest - A claim against property that is held to make sure money is paid or that something is done; includes mortgages, liens, etc.

Successors - Persons, other than creditors, who are entitled to property of a decedent under the decedent's Will or under the laws of intestate succession.

Venue - The proper district court for the filing of the informal proceeding forms and for dealing with any problems that may be raised during the course of administration of the estate.

Endnotes:

—
—
1. Tax Laws are subject to change. Check with state and federal tax offices for current exemptions.

2. See N.D.C.C. 30.1-23-03 for the definition of "small estates".

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INVENTORY	A	B	C
DESCRIPTION OF PROPERTY	PROBATE PROPERTY Owned Solely by Decedent	PROBATE PROPERTY Owned by decedent and other(s) as tenants in common	NON-PROBATE* PROPERTY Owned Solely by decedent or by decedent and other(s) as joint tenants
REAL PROPERTY (such as house, lake cabin, farmland, oil or mineral rights, life estate)	\$	\$	\$
PERSONAL PROPERTY	\$	\$	\$
A. Money, notes & cash (such as c.d.'s & bank accounts)			
B. Stocks and bonds	\$	\$	\$
C. Insurance	\$	\$	\$
D. Miscellaneous (such as vehicles, personal belongings, tools, farm equipment)	\$	\$	\$
SUBTOTALS	\$	\$	\$
Total value of property in Column A			\$
Total value of property in Column B			\$
Total value of property in Column C			\$
TOTAL VALUE OF ESTATE ASSETS			\$

*Non-probate means such property as life estates, trusts, insurance proceeds payable to a designated beneficiary and gifts in contemplation of death, as well as property held in joint tenancy.

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AFFIDAVIT FOR COLLECTION OF PERSONAL PROPERTY OF THE DECEDENT. (N.D.C.C. 30.1-23-01).

Name, Address, and Telephone No. of Attorney

Space below for use of District Court only

Probate No. _____

Attorney _____ for:

IN THE DISTRICT COURT OF _____ COUNTY, STATE OF NORTH DAKOTA

In the Matter of the Estate of _____, Deceased.

**AFFIDAVIT FOR COLLECTION OF PERSONAL PROPERTY
OF THE DECEDENT**

STATE OF NORTH DAKOTA }

}

}

SS.

County of _____ }

_____, being duly sworn, states the following:

1. I am the successor of _____
who died on _____, because:
2. The value of the entire estate of the decedent, wherever located, less liens and encumbrances, does not exceed \$50,000.
3. Thirty (30) days have elapsed since the death of the decedent.
4. No application or petition for the appointment of a personal representative of the decedent's estate is pending or has been granted in any jurisdiction.
5. (a) As successor of the decedent, I am entitled to the payment of any sums of money due and owing the decedent and to the delivery of all tangible personal property belonging to the decedent and to the delivery of all instruments evidencing a debt, obligation, stock or chose in action belonging to the decedent.
- (b) As successor of the decedent, I am entitled to payment or delivery of*

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Affiant

Notary Public

(SEAL)

Page 2 of NDPC FORM 1

APPLICATION FOR INFORMAL PROBATE OF WILL AND APPOINTMENT OF A PERSONAL REPRESENTATIVE. (N.D.C.C. 30.1-14-01).

Name, Address, and Telephone No. of Attorney

Space below for use of District Court only

Probate No. _____

Attorney _____ for:

IN THE DISTRICT COURT OF _____ COUNTY, STATE OF NORTH DAKOTA

In the Matter of the Estate of _____, Deceased.

**APPLICATION FOR INFORMAL PROBATE OF WILL
AND APPOINTMENT OF A PERSONAL REPRESENTATIVE**

I, as the applicant, provide the following information:

- A. (1) I am _____
(state interest of applicant)
- (2) Decedent died on _____ at the age of _____ years.
- At the time of death, the decedent was domiciled in _____ County,
_____ (State), and is survived by the following persons who are the surviving
spouse, children, heirs or devisees of the decedent.

Name	Age	Relationship	Address
------	-----	--------------	---------

- (3) Venue for this case is in this County because _____

- (4) No personal representative has been appointed whose letters have not been terminated, except _____
_____, whose address is _____
was appointed personal representative on _____, in
_____ County, _____ (State).

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(5) I have not received any demand for notice and am unaware of a demand for notice of any probate or appointment proceeding concerning the decedent that may have been filed in this state or elsewhere, except as follows: _____

(6) The time limit for informal probate and appointment has not expired.

B. (1) The original or an authenticated copy of decedent's last will, if not already in the possession of the court, is filed with this application.

(2) That I, to the best of my knowledge, believe the will to have been validly executed.

(3) After the exercise of reasonable diligence, I am unaware of any instrument revoking the will; and I believe the instrument is the decedent's last will.

C. (1) The original of decedent's will was executed on _____ (Month/Day/Year).

(2) The name, address, and priority for appointment of the person whose appointment is sought are as follows: _____

I request the above described will be admitted to informal probate, and that I be appointed personal representative of the decedent's estate.

Applicant

Address

STATE OF NORTH DAKOTA

} ss.

County of _____ }

_____, being duly sworn, states as follows:

That I am the applicant in the foregoing application; that I have read the same and believe the statements therein to be true to the best of my knowledge.

Subscribed and sworn to before me this _____ day of _____, 20 _____

Notary Public

My commission expires: _____ County, North Dakota

STATEMENT OF INFORMAL PROBATE OF WILL AND APPOINTMENT OF A PERSONAL REPRESENTATIVE. (N.D.C.C. 30.1-14-03, 30.1-14-08)

Name, Address, and Telephone No. of Attorney

Space below for use of District Court only

Probate No. _____

Attorney _____ for:

IN THE DISTRICT COURT OF _____ COUNTY, STATE OF NORTH DAKOTA

In the Matter of the Estate of _____, Deceased.

**STATEMENT OF INFORMAL PROBATE OF WILL
AND APPOINTMENT OF A PERSONAL REPRESENTATIVE**

The application of _____ for informal probate of the last will of _____, deceased, and the appointment of a personal representative having come before the Court this _____ day of _____, 20_____, and it appearing that:

1. The decedent died on _____, 20_____, and at least one hundred twenty (120) hours have elapsed since the decedent's death; and
 - (a) The application is complete;
 - (b) The application contains the applicant's oath or affirmation that the statements contained therein are true to the best of the applicant's knowledge and belief; and that all of the statements required by law to be made in the application have been made;
 - (c) The applicant appears to be an interested person as defined by the laws of this state;
 - (d) On the basis of the statements in the application, venue is proper;
 - (e) The will to which this appointment relates appears to be the original, duly executed and apparently unrevoked, will of the decedent and is in the court's possession;
 - (f) Any notice required by the laws of this state has been given and the application is not within Section N.D.C.C. 30.1-14-04.
 - (g) From the statements in the application it appears that the person whose appointment is sought is entitled to appointment by priority;
 - (h) The time limit for the original probate of this will has not expired.

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2. A personal representative has not been appointed in another county in this state and neither the will subject of this application nor any other will of the decedent has been the subject of a previous probate order.

NOW, THEREFORE, IT IS ORDERED as follows:

1. The application for informal probate is granted and the will of _____ dated _____, is admitted to informal probate.
2. The application for informal appointment of a personal representative is granted and _____ is appointed as personal representative of the estate of _____, deceased, without bond (or upon giving bond in the amount of \$ _____).
3. Letters Testamentary shall be issued to _____ upon qualification and acceptance.

Dated this _____ day of _____

Judge/Clerk

Name, Address, and Telephone No. of Attorney

Space below for use of District Court only

Probate No. _____

Attorney _____ for:

IN THE DISTRICT COURT OF _____ COUNTY, STATE OF NORTH DAKOTA

In the Matter of the Estate of _____, Deceased.

LETTERS TESTAMENTARY
(Informal Probate)The will of _____ having been admitted to informal probate,
_____ is appointed personal representative of the estate.WITNESS: Hon. _____, Judge/Clerk of the District Court, County of
_____, State of North Dakota, with the seal of the Court affixed the _____ day

of _____, 20_____

Judge/ Clerk

STATE OF NORTH DAKOTA }

County of _____ } ss.

I, _____, accept the duties of personal representative of the estate of
_____, deceased, and will perform, according to law, the duties of personal
representative of the estate of _____, deceased.

STATE OF NORTH DAKOTA }

County of _____ } ss.

I, the undersigned, _____ of
the District Court of _____ County certify that the foregoing is a full,
true, and correct copy of the original Letters on file with the Court and that on the date of this
certificate they were in full force and effect.

Dated _____, _____, _____

of Court

Court Seal

NOTICE AND INFORMATION TO HEIRS AND DEVISEES. (N.D.C.C. 30.1-18-05).

#1
SB 2070
3-6-19

Name, Address, and Telephone No. of Attorney

Space below for use of District Court only

Probate No. _____

Attorney _____ for:

IN THE DISTRICT COURT OF _____ COUNTY, STATE OF NORTH DAKOTA

In the Matter of the Estate of _____, Deceased.

NOTICE AND INFORMATION TO HEIRS AND DEVISEES

To the heirs and devisees of the above named estate:

1. The decedent, _____, died on or about the _____ day of _____ of _____.
2. You have or may have an interest in the estate of the decedent:
3. _____, whose address is _____
_____ was appointed personal representative of the estate on the _____ day of _____, and filed a bond in the amount of \$ _____.
4. Papers and information relating to the estate are on file in the District Court in _____ County, North Dakota, at _____ (city), North Dakota; and that fewer than thirty (30) days have passed since the date of appointment of the personal representative.
5. This estate is being administered by the Personal Representative under the Uniform Probate Code without supervision by the Court. All recipients of this Notice are further informed that each of them is entitled to information regarding the administration of this estate from the Personal Representative.
6. All recipients are further notified that any of them may petition the court in any matter relating to this estate, including distribution of assets and expenses of administration.

Dated this _____ day of _____

Personal Representative_____
Address

#1
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Name, Address, and Telephone No. of Attorney

Space below for use of District Court only

Probate No. _____

Attorney _____ for:

IN THE DISTRICT COURT OF _____ COUNTY, STATE OF NORTH DAKOTA

In the Matter of the Estate of _____, Deceased.

NOTICE TO CREDITORS

NOTICE IS HEREBY GIVEN that the undersigned has been appointed personal representative of the above estate. All persons having claims against the deceased are required to present their claims within three months after the date of the first publication or mailing of this notice or the claims will be forever barred. Claims must either be presented to _____

_____, personal representative of the estate, at _____

_____ or filed with the Court.

Dated this _____ day of _____

Personal Representative_____
Address_____

Attorney _____ for _____

First publication on the _____ day of _____

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IN DISTRICT COURT

IN THE MATTER OF THE ESTATE OF _____, DECEASED.

**AFFIDAVIT FORWARDING COPY OF APPLICATION
TO DEPARTMENT OF HUMAN SERVICES**

STATE OF NORTH DAKOTA

}

ss.

County of _____ }

_____, being first duly sworn on oath,
deposes and says that I am the _____ of the Estate of _____, Deceased;
and

That I did forward copies of the application commencing probate proceedings, together with a list of the names of the legatees,
devisees, surviving joint tenants, and heirs at law to the estate to the North Dakota Department of Human Services, State Capitol,
Bismarck, North Dakota 58505, pursuant to Sections 50-06.3-07 and 50-24.1-07, N.D.C.C..

Dated _____

Subscribed and sworn to before me this _____ day of _____

Notary Public

_____, County, North Dakota

(Seal)

My commission expires: _____

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STATE OF NORTH DAKOTA

County of _____

} ss.

IN THE MATTER OF THE ESTATE OF

_____, DECEASED.

AFFIDAVIT FOR ACCESS TO SAFE DEPOSIT BOX

To: _____ (bank or trust company)

1. _____, lessee of safety deposit box number _____ died on _____

2. The box may contain (check all that apply)

☐

the will of the lessee;

☐

the deed to a burial lot or a document containing burial instructions for the lessee; or

☐

property belonging to the estate of the lessee.

3. I am an interested person and wish to open the box:

(1) To conduct a will search;

(2) To obtain a document required to facilitate the lessee's wishes regarding body, funeral, or burial arrangements; or

(3) To make an inventory of the box.

4. There has been no application for, or appointment of, a personal representative or administrator of the decedent's estate.

5. No contents of the box, other than a will and a document required to facilitate the lessee's wishes regarding body, funeral, or burial arrangements, will be removed.

Dated this _____ day of _____

Affiant

Subscribed and sworn to before me this _____ day of _____

Notary Public

_____, County, North Dakota

(Seal)

My commission expires: _____

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WAIVER OF RIGHT TO APPOINTMENT. (N.D.C.C. 30.1-13-03).

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Name, Address, and Telephone No. of Attorney

Space below for use of District Court only

Probate No. _____

Attorney _____ for:

IN THE DISTRICT COURT OF _____ COUNTY, STATE OF NORTH DAKOTA

In the Matter of the Estate of _____, Deceased.

WAIVER OF RIGHT TO APPOINTMENT

I, _____, am the _____ of and one of the heirs at law of the above named decedent and have an equal priority to be appointed personal representative of the estate of the decedent. I waive my right to such appointment and request appointment by the Court of _____, to act as personal representative, without bond.

This waiver is filed with the Court pursuant to N.D.C.C. 30.1-13-03.

Dated this _____ day of _____, 20_____.

Address: _____

IN THE DISTRICT COURT OF _____ COUNTY, STATE OF NORTH DAKOTA

In the Matter of the Estate of _____, Deceased.

INVENTORY AND APPRAISEMENT

_____, the Personal Representative of the Estate of the above-named Decedent, states that the following inventory contains a true statement of all the property owned by the Decedent at the time of death on _____, so far as is known to the Personal Representative.

Further, the values set forth for each item are the fair market values of the property as of the date of the decedent's death, and the inventory sets forth the type and amount of any encumbrances that exist with reference to any item.

REAL PROPERTY OWNED SOLELY BY DECEDENT:
(provide legal description)

\$ _____

REAL PROPERTY OWNED JOINTLY BY DECEDENT:
(provide legal description)

\$ _____

TOTAL VALUE OF REAL PROPERTY

\$ 0

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PERSONAL PROPERTY OWNED SOLELY BY DECEDENT

\$ _____

PERSONAL PROPERTY OWNED JOINTLY BY DECEDENT

\$ _____

TOTAL VALUE OF PERSONAL PROPERTY

\$ 0 _____

GROSS ESTATE

Real Property

\$ 0 _____

Personal Property

\$ 0 _____

\$ 0 _____

LIENS, MORTGAGES, ENCUMBRANCES

\$ _____

TOTAL VALUE OF NET ESTATE IN NORTH DAKOTA

\$ 0 _____

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3-6-19

Dated this _____ day of _____, 20____.

STATE OF _____)
COUNTY OF _____) ss.

_____, being first duly sworn, says that I am the Personal Representative of the Estate of the above-named Decedent; that the foregoing Inventory and Appraisement contains a true statement of all the estate of Decedent that has come to my knowledge or possession and particularly of all money belonging to the Decedent and of all just claims of the Decedent against me; and of all liens, mortgages, or other encumbrances on the real and personal property of Decedent.

Personal Representative

Subscribed and sworn to before me this _____ day of _____, 20____.

Notary Public

_____ County, _____

My Commission Expires: _____

DEED OF PERSONAL REPRESENTATIVE. (N.D.C.C. 30.1-18-03).

#1
SB 2070
3-6-19**PERSONAL REPRESENTATIVE'S DEED OF DISTRIBUTION**

THIS INDENTURE, made this _____ day of _____,
by and between _____
personal representative of the estate of _____
deceased, hereinafter referred to as Grantor, and

hereinafter referred to as Grantee _____, WITNESSETH:

WHEREAS, Grantor is the duly appointed and acting personal representative of the estate of _____,
deceased, and

WHEREAS, Grantee _____ entitled to distribution of certain real property hereinafter
described from the estate of the decedent.

NOW, THEREFORE, Grantor does grant, convey, transfer and distribute all of the right, title and interest of the decedent and
the estate to Grantee _____ in the following proportions:

in and to the following described real property situated in _____
County, North Dakota:

together with the appurtenances thereto:

WITNESS, the hand of the Grantor:

Personal Representative of the Estate

of _____, Deceased

PERSONAL REPRESENTATIVE'S DEED OF DISTRIBUTION. (N.D.C.C. 30.1-18-03).

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STATE OF NORTH DAKOTA

County of _____

} ss.
}

The foregoing instrument was acknowledged before me this _____ day of _____
_____, by _____ personal representative _____ of the estate
of _____, deceased.

Notary Public

(Seal)

_____, County, North Dakota

My commission expires: _____

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IN THE DISTRICT COURT OF _____ COUNTY, STATE OF NORTH DAKOTA

In the Matter of the Estate of _____, Deceased.

PERSONAL REPRESENTATIVE'S DEED
(Sale of Real Property)

THIS INDENTURE, made this _____ day of _____, 20____, by and between _____, personal representative of the estate of _____, deceased (Grantor), and _____, Grantee(s), whose post office address is _____

WITNESSETH:

WHEREAS, Grantor is the duly appointed and acting personal representative of the estate of _____, deceased, and

WHEREAS, Grantee(s) desires to purchase decedent's interest in certain real property hereinafter described;

NOW, THEREFORE, Grantor, in consideration of the sum of _____ does grant, convey, transfer and sell to Grantee(s) all of the right, title, and interest of the decedent and the estate in and to the following described real property situated in the County of _____, State of _____

WITNESS, the hand of the Grantor:

Personal Representative of the Estate of

_____, Deceased.

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3-6-19

STATE OF)
)
COUNTY OF) ss.

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by
_____, personal representative of the estate of _____
_____, deceased.

Notary Public

_____ County, _____

My Commission Expires: _____

3-6-19

PERSONAL REPRESENTATIVE'S ASSIGNMENT. (N.D.C.C. 30.1-18-03).

Name, Address, and Telephone No. of Attorney

Space below for use of District Court only

Probate No. _____

Attorney _____ for:

IN THE DISTRICT COURT OF _____ COUNTY, STATE OF NORTH DAKOTA

In the Matter of the Estate of _____, Deceased.

PERSONAL REPRESENTATIVE'S ASSIGNMENT

THIS INDENTURE, made this _____ day of _____
by and between _____
personal representative _____, of the Estate of _____
deceased, hereinafter referred to as Assignor, whether one or more, and _____
whose post office address is _____

hereinafter referred to as Assignee, whether one or more, WITNESSETH:

WHEREAS, Assignor is the duly appointed and acting personal representative of the Estate of _____
_____, deceased, and

WHEREAS, Assignee is entitled to distribution of certain personal property hereinafter described from the Estate of the
decedent,

NOW, THEREFORE, Assignor does assign, transfer, release and distribute to Assignee the following:

PERSONAL REPRESENTATIVE'S ASSIGNMENT. (N.D.C.C. 30.1-18-03).

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WITNESS, the hand of the Assignor:

Personal Representative _____ of the
Estate of _____
Deceased _____

STATE OF NORTH DAKOTA }
County of _____ } ss.

The foregoing instrument was acknowledged before me this _____, day of _____, by _____, personal representative _____ of the estate of _____, deceased.

Notary Public

_____, County, North Dakota

My commission expires: _____

(Seal)

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PERSONAL REPRESENTATIVE'S VERIFIED STATEMENT TO CLOSE THE ESTATE. (N.D.C.C. 30.1-21-03).

Name, Address, and Telephone No. of Attorney

Space below for use of District Court only

Probate No. _____

Attorney _____ for:

IN THE DISTRICT COURT OF _____ COUNTY, STATE OF NORTH DAKOTA

In the Matter of the Estate of _____, Deceased.

**PERSONAL REPRESENTATIVE'S VERIFIED STATEMENT
TO CLOSE THE ESTATE**

STATE OF NORTH DAKOTA

} ss.

County of _____ }

_____, being duly sworn, states as follows:

1. I am the duly appointed, qualified and acting personal representative of the above estate.
2. I have published notice to creditors as provided in N.D.C.C. 30.1-19-01 and have filed proof of publication of such notice.

The first publication occurred more than three months prior to the date of this statement.

3. I have fully administered the estate of the decedent by making payment, settlement or other disposition of all claims which were presented, expenses of administration and estate, inheritance and other death taxes except as follows:

4. I have distributed the assets of the estate to the persons entitled to the assets in the amount and manner to which they are entitled. (By agreement with the distributees the assets were distributed subject to outstanding liabilities of the estate.)

5. I have sent a copy of this statement to all distributees of the estate (and to all creditors or claimants of the estate whom I am aware whose claims are neither paid nor barred), and I have furnished a full account in writing of my administration to the distributees whose interests are affected thereby.

6. This statement is filed for the purpose of closing this estate and terminating the appointment of the undersigned pursuant to N.D.C.C. 30.1-21-03.

Personal Representative

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STATE OF NORTH DAKOTA }
County of _____ } ss.

_____, being first duly sworn,
says that ___ he is the personal representative of the above estate and that ___ he has read the foregoing statements and knows the
contents thereof, and verily believes the statements made therein to be true.

Subscribed and sworn to before me this _____ day of _____, 20____.

Notary Public

_____ County, North Dakota

(Seal)

My Commission expires: _____

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10/01/03
3-6-19

SWORN STATEMENT OF PERSONAL REPRESENTATIVE CLOSING A SMALL ESTATE (N.D.C.C. 30.1-23-04).

Name, Address, and Telephone No. of Attorney

Space below for use of District Court only

Probate No. _____

Attorney _____ for:

IN THE DISTRICT COURT OF _____ COUNTY, STATE OF NORTH DAKOTA

In the Matter of the Estate of _____, Deceased.

SWORN STATEMENT OF PERSONAL REPRESENTATIVE CLOSING A SMALL ESTATE

STATE OF NORTH DAKOTA }
 }
County of _____ } ss.

_____, being duly sworn, states the following under oath:

I am the duly appointed, qualified and acting personal representative of the above estate, appointed on _____
_____, in the above Court.

2. To the best of my knowledge, the value of the entire estate, less liens and encumbrances, did not exceed the homestead allowance, exempt property, family allowance, costs and expenses of administration, reasonable funeral expenses, and the reasonable, necessary medical and hospital expenses of the last illness of the decedent.
3. I have fully administered the estate by disbursing and distributing it to the persons entitled thereto.
4. I have sent a copy of the closing statement to all distributees of the estate and to all creditors or other claimants of whom I am aware whose claims are neither paid nor barred and have furnished a full account in writing of personal representative's administration to the distributees whose interests are affected.
5. No order of the Court prohibits closing of the estate and the estate is not being administered by a supervised personal representative.

This statement is filed for the purpose of closing the above estate and terminating my appointment as personal representative pursuant to N.D.C.C. 30.1-23-04.

Subscribed and sworn to before me this _____ day of _____

Notary Public_____
County, North Dakota

(Seal)

My commission expires: _____

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APPLICATION FOR INFORMAL APPOINTMENT OF A PERSONAL REPRESENTATIVE IN INTESTACY. (N.D.C.C. 30.1-14-01).

Name, Address, and Telephone No. of Attorney

Space below for use of District Court only

Probate No. _____

Attorney _____ for:

IN THE DISTRICT COURT OF _____ COUNTY, STATE OF NORTH DAKOTA

In the Matter of the Estate of _____, Deceased.

**APPLICATION FOR INFORMAL APPOINTMENT
OF PERSONAL REPRESENTATIVE IN INTESTACY**

I, as the applicant, provide the following information:

- A. (1) I am _____
(state interest of applicant)
- (2) Decedent died on _____, at the age of _____ years. At the time of death, the decedent was domiciled in _____ County, _____ (state), and is survived by the following persons who are the surviving spouse, children, heirs or devisees of decedent.

Name	Age	Relationship	Address
------	-----	--------------	---------

- (3) Venue for this case is in this County because _____
- (4) No personal representative has been appointed whose letters have not been terminated, except _____, whose address is _____, was appointed personal representative on _____ in _____ County, _____ (state).

3-6-19

(5) I have not received any demand for notice and am unaware of a demand for notice of any probate or appointment proceeding concerning the decedent that may have been filed in this state or elsewhere, except as follows: _____

(6) The time limit for informal appointment has not expired.

B. I further state pursuant to Section N.D.C.C. 30.1-14-01(d):

(1) That after the exercise of reasonable diligence, I am unaware of any unrevoked testamentary instrument relating to the property having a situs in this state under Section 30.1-02-01, except such instrument as attached hereto, or described herein, is not being probated, because _____

(2) The priority of the person whose appointment is sought is _____, and the names of any other persons having a prior or equal right to the appointment under Section 30.1-13-03 are as follows: _____

WHEREFORE, I request that _____ be appointed personal representative of decedent's estate and that letters of administration be issued to the appointee upon qualification and acceptance.

STATE OF NORTH DAKOTA

ss.

County of _____

_____, the applicant above, being duly sworn, states as follows:

I have read the application and believe the statements therein to be true to the best of my knowledge.

Subscribed and sworn to before me this _____ day of _____

Notary Public

My Commission expires: _____, County, North Dakota

Name, Address, and Telephone No. of Attorney

Space below for use of District Court only

Probate No. _____

Attorney _____ for:

IN THE DISTRICT COURT OF _____ COUNTY, STATE OF NORTH DAKOTA

In the Matter of the Estate of _____, Deceased.

**STATEMENT OF INFORMAL APPOINTMENT
OF A PERSONAL REPRESENTATIVE - INTESTACY**

The application of _____ for informal appointment
of a personal representative having come before the Court this _____ day of _____,
and it appearing that:

1. The decedent died on _____, and at least one hundred twenty (120)
hours have elapsed since the decedent's death; and
 - a. The application is complete, in that;
 - b. The application contains the applicant's oath or affirmation that the statements contained therein are true to the best of the applicant's knowledge and belief; and that all of the statements required by law to be made in the application have been made;
 - c. The applicant appears to be an interested person as defined by the laws of this state;
 - d. On the basis of the statements in the application, venue is proper;
 - e. Any notice required by the laws of this state has been given;
 - f. That from the statements in the application, it appears that the person whose appointment is sought has priority entitling the appointment.

NOW, THEREFORE, IT IS ORDERED, that:

1. _____ is informally appointed personal representative of the
estate of _____ deceased, without bond (or upon giving bond in the
amount of \$ _____).
2. Letters of Administration shall be issued to _____
upon qualification and acceptance.

Dated this _____ day of _____

Judge/Clerk

3-6-19

LETTERS OF ADMINISTRATION. (N.D.C.C. 30 1-14-07).

Name, Address, and Telephone No. of Attorney

Space below for use of District Court only

Probate No. _____

Attorney _____ for:

IN THE DISTRICT COURT OF _____ COUNTY, STATE OF NORTH DAKOTA

In the Matter of the Estate of _____, Deceased.

LETTERS OF ADMINISTRATION_____
_____ is appointed personal representative of the estate of
_____, deceased.WITNESS: Hon. _____, Judge/Clerk of the above entitled Court, with the
seal thereof affixed the _____ day of _____,_____
Judge/ClerkSTATE OF NORTH DAKOTA }
County of _____ } ss.I accept the duties of personal representative of the estate of _____
_____, deceased, and will perform, according to law, the duties of the personal representative.

Date _____

STATE OF NORTH DAKOTA }
County of _____ } ss.**CERTIFICATE**I, the undersigned, _____ of
the District Court of _____ County, certify that the foregoing is a full,
true and correct copy of the original Letters on File with the Court and that on the Date of this
certificate they were in full force and effect.Dated _____
_____ of Court

Court Seal